

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SANDY J. BATTISTA,

Plaintiff,

V.

HAROLD W. CLARKE,
KATHLEEN M. DENNEHY,
ROBERT MURPHY,
TERRE K. MARSHALL, and
SUSAN J. MARTIN, in their official and individual
capacities;

Defendants.

Civil Action No.
05-11456-DPW

**ORAL
ARGUMENT
REQUESTED**

PLAINTIFF'S RENEWED MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Sandy Jo Battista moves pursuant to Fed. R. Civ. P. 65 for a preliminary injunction compelling the Defendants to authorize the implementation of the hormone therapy she was prescribed in April, 2005 to treat her Gender Identity Disorder (“GID”) no later than September 30, 2008, and in the interim time period to take all steps necessary to prepare for the administration of that therapy, including identifying any accommodations necessary to minimize security risk, arranging for follow up consultation with the endocrinologist to update the prescription, and assessment of the psychotherapy being provided to Ms. Battista to ensure it is considered appropriate. As grounds, Plaintiff states:

1. Defendants' stated reason for resisting implementation of Ms. Battista's treatment plan was that there were concerns about the validity of her GID diagnosis. The Department of Corrections ("DOC") has now had Ms. Battista examined by its new GID consultant, who has concluded that "of course" she suffers from GID.

2. Defendants have spent more than three years attempting to undermine, interfere with, or flatly ignore the recommendations of all of Ms. Battista's treating clinicians that she be treated with hormone therapy for her GID.
3. Now, however,, the central dispute-- whether Ms. Battista suffers from GID-- has been resolved. She has on record a detailed plan of treatment, recommended by recognized experts in GID, repeatedly confirmed by the entity who was then the DOC contractual medical provider, and cleared medically by the DOC endocrinologist who actually prescribed the hormones in April, 2005. There is no clinical or legal reason to further delay Ms. Battista's treatment.
4. As more fully set forth in the accompanying memorandum, Defendants' approach to the management of Ms. Battista's medical condition constitutes deliberate indifference to her serious medical needs, and for this reason she is likely to succeed on her claims under the Eighth and Fourteenth Amendments.
5. The balance of harms favors the issuance of an injunction. There is minimal inconvenience to the Defendants of allowing this treatment to go forward. The DOC already maintains inmates on hormones in other correctional facilities without undue incident. Further, the Defendants have done nothing for the past three or more years to assess or address any security risks associated with this treatment, undermining any claim that security concerns are the real barrier to treatment for Ms. Battista.
6. Finally, an injunction would serve, not harm, the public interest. Holding prison officials accountable for their constitutional obligations, and ensuring the protection of Eighth and Fourteenth Amendments in the prison system, serves the public interest, and public

policy cannot favor allowing prison officials to continuously and systematically interfere with the medical judgment of trained professionals.

For the reasons set forth herein and in the accompanying Memorandum of Law, Ms. Battista respectfully requests that the Court order the Defendants to (i) commence hormone therapy for her GID no later than September 30, 2008; and (ii) take all reasonably necessary steps in the meantime to update her prescription, implement appropriate psychotherapy, and develop a plan to address whatever reasonable security concerns they might have.

Dated: August 6, 2008

Respectfully submitted,

SANDY J. BATTISTA

by her attorneys,

/s/ Emily E. Smith-Lee

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